

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 614 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ROOPAN MAL ISHVARDAS

Versus

FOOD INSPECTOR,

Appearance:

MR IM KAPUR for Petitioner

M/S THAKKAR ASSOC. for Respondent No. 1

Miss B.S. Gajjar, A.P.P.for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 18/03/98

ORAL JUDGEMENT

Heard learned Advocate Mr. I.M. Kapoor for the petitioner, learned A.P.P. Miss B.S. Gajjar for the respondent no.2 and Mr. Tirmizi for the respondent no.1.

Rule. Learned Advocates appearing for the respondents nos.1 and 2 have waived service of rule. By

consent of parties, the matter is finally heard.

Being aggrieved and dissatisfied by the order dated 8th December, 1997 passed by the learned Second Additional Sessions Judge, Junagadh, District Junagadh, in the matter of Criminal Appeal no.3/'96, the petitioner has filed the present petition. That vide the impugned judgment and order the learned Second Additional Sessions Judge, Junagadh has dismissed the Criminal Appeal filed by the present petitioner and has confirmed the order of conviction and imposing of sentence on the petitioner, passed by the learned J.M.F.C, Keshod, District Junagadh in the matter of Criminal Case no.541/'88; that vide said order the present petitioner is convicted for having committed an offence under Section 7(iii) of the Prevention of Food Adulteration Act, 1954(hereinafter referred to as the "Act") read with Rule 50(1) of the Prevention of Food Adulteration Rules, 1955(hereinafter referred to as the "Rules") and has imposed the sentence under Section 16(1) of the Act for simple imprisonment of three months and to pay fine of Rs.500/-; that in default of payment of fine, the petitioner is ordered to undergo simple imprisonment for further fifteen days.

The material and relevant facts for the present matter could be listed as under:

That the Food Inspector Shri R.B. Parmar of Keshod Nagarpalika, District Junagadh, filed Criminal Complaint no.541/'88 in the Court of Judicial Magistrate, First Class, Keshod on 12-9-1988 against the present petitioner on the allegations that the petitioner has been running a restaurant in the name and style of Simla Restaurant at Station Road, Keshod; that the petitioner is manufacturing, storing, displaying for sale and offering for sale articles of food in the said restaurant without obtaining requisite licence as prescribed under Rule 50(1) of the Rules. Furthermore, despite repeated reminders by written notice addressed to the petitioner by the Food Inspector, the petitioner has failed to obtain necessary licence for the said business of restaurant and thereby has committed offence under Section 7(iii) of the Act which is made punishable under Section 16(1) of the Act.

That the petitioner was served with the summons issued by the J.M.F.C, Keshod in the proceedings of Criminal Case no.541/'88. The petitioner appeared through Advocate and contested the prosecution; that the trial Court after recording evidence of the complainant framed charge against the petitioner as per Exh.46 of the

trial Court record and permitted the petitioner as accused to the further cross-examination of the complainant; that thereafter on completion of evidence of prosecution, statement of the present petitioner and the accused under Section 313 of the Criminal Procedure Code was recorded wherein the present petitioner has denied to have received any written notice from the complainant as alleged in the complaint. The petitioner as accused has also denied to have given any statement to the complainant as produced vide Exh.34, according to the record of the trial Court, admitting the fact that he is the owner of Simla Restaurant, Station Road, Keshod; that the petitioner has contended in his further statement under Section 313 of the Criminal Procedure Code that the complainant has fabricated a false complaint against him; that he is not the owner of the said Simla Restaurant and as such he has not committed any offence; that the petitioner has shown willingness to examine the defence witness and as such had examined one Thakurdas Chatrabhuj vide Exh.52 of the trial Court record; that the learned J.M.F.C. on conclusion of recording of evidence, heard the arguments of parties at length and vide judgment and order dated 26-12-1995 convicted the petitioner for the offence as stated hereinabove and imposed the sentence of simple imprisonment of three months and to pay the fine of Rs.500/-, in default of payment of fine, to under further simple imprisonment for fifteen days; that the petitioner challenged the said order of conviction and sentence by filing Criminal Appeal no.3/'96 in the Court of the learned Sessions Judge, Junagadh, District Junagadh; that the learned Second Additional Sessions Judge, Junagadh heard the said Criminal Appeal no.3/'96 filed by the present petitioner and disposed of by the impugned order dated 8th December, 1997 against which the petitioner has filed the present Revision Application.

Shri I.M.Kapoor, learned Advocate appearing on behalf of the petitioner has submitted that the Lower Appellate Court has committed gross error in appreciating the evidence produced on record and have erroneously held that the petitioner is the owner of Simla Restaurant. It is further submitted that the Lower Appellate Court as well as the trial Court has failed to consider the documentary evidence produced on record in the form of rent receipt of the building in which business of said Simla Restaurant is being carried out and has also failed to consider the oral evidence of defence witness no.1 Thakurdas Chatrabhuj who has stated on oath that he is the owner of said Simla Restaurant and he is running the business in the said premises which was taken on rent by his father. Shri Kapoor has submitted that on the face

of statement made by the defence witness the trial Court as well as the Lower Appellate Court has erroneously given the finding of fact that the present petitioner is the owner of the business carried out in the name of Simla Restaurant at Station Road, Keshod; that on account of said error in appreciation of evidence, the petitioner has suffered gross injustice and thereby in the interest of justice, this Court should interfere with the findings given by the Lower Appellate Court.

As against that Mr. Tirmizi, learned Advocate appearing on behalf of the respondent no.1-the original complainant-Food Inspector has submitted that the defence witness examined by the present petitioner before the trial Court happens to be nephew of present petitioner; that prior to examining said witness at the time of trial, at no point of time, the petitioner has ever contended either before the Court or before the complainant that said Thakurdas Chatrabhuj is the owner of Simla Restaurant; that as such the story deposed by the defence witness is nothing but an after thought; that the present petitioner having admitted before the complainant as per the statement produced in trial Court vide Exh.34 to the effect that he is the owner of Simla Restaurant, the burden of proof has shifted on the petitioner as accused to rebut the said fact by producing cogent and convincing evidence; that the present petitioner has failed to produce the certificate issued under the Provisions of the Bombay Shops and Establishments Act showing ownership of the business carried out in the said premises and as such the judgment and order passed by the trial Court as well as the Lower Appellate Court are just and proper and no interference is required. Learned A.P.P. Ms. B. R. Gajjar has adopted the submission made by Mr. Tirmizi on behalf of the respondent no.1.

On appreciation of material produced on record, in my opinion, the submission urged by the learned Advocate Shri Kapoor on behalf of the petitioner cannot be accepted for more than one reason. It is undisputed that a business of Simla Restaurant at Station Road, Keshod is being carried out wherein articles of food are manufactured, stored and offered for sale. It is observed by the learned J.M.F.C. in the judgment that the present petitioner has been sitting in the said shop where the business of restaurant is being carried out; that the original complainant-the Food Inspector has stated on oath that he has visited the premises of Simla Restaurant and after due inquiry has served notices dated 2-6-1987, 24-6-1987 and 17-3-1988 which are produced on record of trial Court vide Exhs.27, 28 and 29 directing

the petitioner to obtain requisite licence as prescribed under Rule 50(1) of the Rules; that said Food Inspector has also deposed to the effect that in his presence the present petitioner has given a statement which is produced on record of trial Court vide Exh.34 which states that the petitioner is the owner of said Simla Restaurant; that said evidence has been denied by the petitioner while giving his statement under Section 313 of the Criminal Procedure Code and has stated that said documents are concocted and fabricated by the Food Inspector to file a false complaint against him. In the instant case, circumstances attending to the said fact, it is difficult to believe that such document could have been concocted and fabricated against the petitioner only with a view to filing a false complaint against the petitioner. It is pertinent to note that the petitioner has failed to step into the box to deny the receipt of above stated notice and to deny the said statement on oath. The petitioner has only examined his nephew through which he has placed on record a statement that said Thakurdas Chatrabhuj is the owner of the said Simla Restaurant and that the petitioner has nothing to do with the said business. In my opinion, the learned J.M.F.C. has rightly appreciated the documentary as well as oral evidence recorded in the proceedings of Criminal Case no.541/'88 and has rightly come to the conclusion that the petitioner is the owner of business of Simla Restaurant which is being run without obtaining the requisite licence under the Act and the Rules. As such I do not find any illegality or procedural irregularity or impropriety in the impugned judgment of trial Court as well as the Lower Appellate Court. That the reasons assigned by both the lower Courts cannot be said to be perverse. Hence, I hold that in the facts and circumstances of the present case, no interference of this Court is warranted in the present matter.

As a result, the present Revision Application fails. Rule is discharged. Interim relief granted vide earlier order stands vacated. The petitioner is directed to surrender before the concerned authority on or before 27th March, 1998 to undergo the imprisonment as per the judgment and order of trial Court. No order as to costs.

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